

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

IN RE: Bair Hugger Forced Air Warming Products Liability Litigation

MDL No. 15-2666 (JNE/FLN)

Docket No.: 0:17-cv-4139

This Document Relates to All Actions.

PLAINTIFF(S)

Jerline R. Miller and Calvin H. Miller

**AMENDED EXHIBIT B TO
PRETRIAL ORDER #8 –
FIRST AMENDED MASTER SHORT
FORM COMPLAINT AND JURY
TRIAL DEMAND**

VS.

**3M COMPANY AND ARIZANT
HEALTHCARE, INC.**

1. Plaintiff, Jerline R. Miller, states and brings this civil action in MDL No. 15-2666, entitled *In Re: Bair Hugger Forced Air Warming Products Liability Litigation*. Plaintiff(s) [is/are] filing this Short Form Complaint as permitted by Pretrial Order #8 of this Court.

PARTIES, JURISDICTION AND VENUE

2. Plaintiff, Jerline R. Miller, is a resident and citizen of the State of Georgia and claims damages as set forth below.

3. Plaintiff's Spouse, Calvin H. Miller, is a resident and citizen of the State of Georgia, and claims damages as set forth below.

[Cross out Spousal Claim if not applicable.]

4. Jurisdiction is proper based upon diversity of Citizenship.

5. Proper Venue: The District Court in which remand trial is proper and where

this Complaint would have been filed absent the direct filing order by this Court is USDC Northern District of Georgia.

6. Plaintiff brings this action [*check the applicable designation*]:



On behalf of [himself/herself];



In a representative capacity as the _____ of the _____ having been duly appointed as the _____ by the _____ Court of _____. A copy of the Letters of Administration for a wrongful death claim is annexed hereto if such letters are required for the commencement of such a claim by the Probate, Surrogate or other appropriate court of the jurisdiction of the decedent.

[Cross out if not applicable.]

FACTUAL ALLEGATIONS

7. On or about 8/4/2015, Plaintiff underwent surgery during which the Bair Hugger Forced Air Warming system (hereinafter “Bair Hugger”) was used during the course and scope of [his/her] revision of her R-TKA [Type of Surgery] at the St. Joseph's Hospital [medical center and address], in Atlanta, GA [city and state], by Dr. Mark Hanna.

8. Contaminants introduced into Plaintiff’s open surgical wound as a direct and proximate result of use of the Bair Hugger during the subject surgery resulted in Plaintiff developing a periprosthetic joint infection (“PJI”), also known as a deep joint infection (“DJI”). The Pathogen identified was Enterobacter cloacae complex (*if known*).

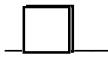
9. As a result of Plaintiff's infection caused by the Bair Hugger, Plaintiff has undergone multiple staged procedure and an additional surgery [Describe treatment(s) received, e.g., revision arthroplasty, wound vac treatment, multiple staged procedures, etc.] on or about 8/21/2015, 1/13/2016 and 6/21/2017, at St. Joseph's Hospital, Atlanta, GA [medical center(s)] and address(es)] by Dr(s). Mark Hanna. [Cross out if not applicable.]

ALLEGATIONS AS TO INJURIES

10. (a) Plaintiff claims damages as a result of (check all that are applicable):



INJURY TO HERSELF/HIMSELF



INJURY TO THE PERSON REPRESENTED



WRONGFUL DEATH



SURVIVORSHIP ACTION



ECONOMIC LOSS

(b) Plaintiff's spouse claims damages as a result of (check all that are applicable): [Cross out if not applicable.]



LOSS OF SERVICES



LOSS OF CONSORTIUM

11. Defendants, by their actions or inactions, proximately caused the injuries to Plaintiff(s).

DEFENDANT-SPECIFIC ALLEGATIONS AND THEORIES OF RECOVERY

12. The following claims and allegations are asserted by Plaintiff(s) and are herein adopted by reference (check all that are applicable):



FIRST CAUSE OF ACTION - NEGLIGENCE;



SECOND CAUSE OF ACTION - STRICT LIABILITY;



FAILURE TO WARN



DEFECTIVE DESIGN AND MANUFACTURE



THIRD CAUSE OF ACTION – BREACH OF EXPRESS WARRANTY;



FOURTH CAUSE OF ACTION- BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY LAW OF THE STATE OF Georgia , O.C.G.A §§ 11-2-314 ;



FIFTH CAUSE OF ACTION- VIOLATION OF THE MINNESOTA PREVENTION OF CONSUMER FRAUD ACT;



SIXTH CAUSE OF ACTION – VIOLATION OF THE MINNESOTA DECEPTIVE TRADE PRACTICES ACT;



SEVENTH CAUSE OF ACTION- VIOLATION OF THE MINNESOTA UNLAWFUL TRADE PRACTICES ACT;



EIGHTH CAUSE OF ACTION- VIOLATION OF THE MINNESOTA FALSE ADVERTISING ACT;



NINTH CAUSE OF ACTION- CONSUMER FRAUD AND/OR UNFAIR AND DECEPTIVE TRADE PRACTICES UNDER LAW OF THE STATE OF Georgia , O.C.G.A §§ 10-1-372 ;



TENTH CAUSE OF ACTION – NEGLIGENT MISREPRESENTATION;



ELEVENTH CAUSE OF ACTION- FRAUDULENT MISREPRESENTATION;



TWELFTH CAUSE OF ACTION – FRAUDULENT CONCEALMENT;



THIRTEENTH CAUSE OF ACTION – LOSS OF CONSORTIUM; and



FOURTEENTH CAUSE OF ACTION – UNJUST ENRICHMENT.

~~In addition to the above, Plaintiff(s) assert the following additional causes of action under applicable state law:~~

[Cross out if not applicable.]

PRAYER FOR RELIEF

WHEREFORE, Plaintiff(s) pray for judgment against Defendants as follows:

1. For compensatory damages;
2. Pre-judgment and post-judgment interest;
3. Statutory damages and relief of the state whose laws will govern this action;
4. Costs and expenses of this litigation;
5. Reasonable attorneys' fees and costs as provided by law;
6. Equitable relief in the nature of disgorgement;
7. Restitution of remedy Defendants' unjust enrichment; and
8. All other relief as the Court deems necessary, just and proper.

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff(s) hereby demand(s) a trial by jury as to all claims in Complaint so triable.

Dated: September 5, 2017

Respectfully submitted,
/s/ Joseph T. Waechter - FL. Bar 0092593
Michael Goetz - FL. Bar 0963984
Morgan & Morgan - Complex Litigation Group
201 N. Franklin Street, 7th Fl.
Tampa, FL 33602
Phone: 813-223-5505